

BOARD OF APPEALS CASE NO. 5059

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BEFORE THE

APPLICANT: James Run Christian Academy

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ZONING HEARING EXAMINER

**REQUEST: Special Exception to locate a high school in the Agricultural District;
2403 Pleasantville Road, Fallston**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 6/7/00 & 6/14/00

Record: 6/9/00 & 6/16/00

HEARING DATE: July 31, 2000

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ZONING HEARING EXAMINER'S DECISION

The Applicant, James Run Christian Academy, is seeking a Special Exception pursuant to section 267-53C(7)(a) of the Harford County Code to allow a high school in the AG District.

The subject parcel is located at 2403 Pleasantville Road and is more particularly identified on Tax Map 47, Grid 2E, Parcel 508, Lot 3. The subject property is presently the site of the Grandview Christian Church, consists of 14.6 acres, more or less, is zoned AG and is located entirely within the AG/ Agricultural District.

Mr. Robert Mike Robbins appeared for the Applicant and explained that he was the principal of the school. The James Run Christian Academy has met for 4 years on the campus of Eastern Christian College, however, that property has been sold and the school is forced to relocate. Presently there are approximately 40 students and they hope to grow to a maximum of 89 students. There are 7 teachers and 2 staff members associated with school operations. There is no public transportation or private bus service serving the school and all students are delivered and picked up either by private auto or walking. The school plans to use the existing buildings on the property for the school and the witness pointed out that the existing building is divided into various meeting rooms so no renovations are planned. At the request of the Hearing Examiner, a new site plan was offered showing the proposed location of the play areas as well as a proposed new building on the site which appears to be an extension of the church building and not related to this school operation at all. The school will actually operate in the first floor of the existing building.

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Norman Krebs, Victor Arca, Calvin D. Hall and Dorothy Waters all testified in support of the application. Mr. Krebs, Chairman of the Elders of Grandview Christian Church supported the location of the High School as co-utilizer of the property and did not believe any adverse impacts to any neighboring properties or property owners would result from the school operations. Mr. Arca supported the school in its application citing his past, positive experiences with the school and its students. Dorothy Waters added that the opening and closing times were designed purposely so that there would be no interference with the arrival and departure times of students at Youth's Benefit and Friends Schools. Ms. Waters stated that the property adjoins the Fallston Club property which does not operate in the fall, winter and spring months.

Mr. Anthony McClune, Manager, Division of Land Use Management for the Department of Planning and Zoning, appeared and testified that the Department supports the request and found, after thorough investigation, that there would be no adverse impacts to adjoining properties or property owners as a result of the operations of the school. Additionally, any impacts associated with a school in general would be no grater at this location than at any other location within the zone. Mr. McClune discussed each of the Guides and Limitations set forth in Section 267-9I of the Harford County Code and testified that the Department found no adverse impacts related to those guides and limitations.

Mr. John Sommerfeld appeared in opposition to the subject request. He testified that he is an adjoining property owner living at 2407 Pleasantville, Maryland 21047. Mr. Sommerfeld expressed concerns about traffic flow increases and expressed his opposition to use of Lot 2 for ball fields or other outdoor recreational uses. He would ask that landscape screening be added along the property lines to assist in screening his property from view of those activities. Lastly, he expressed concern that his ability to hunt on his property might be somehow impaired and fears that future growth of the school would compound the adverse impacts associated with the school operations.

Mr. William Loeffler also identified himself as an opposing party and indicated that he was a director of the Fallston Club.

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CONCLUSION:

Section 267-53C(7)(a) provides:

“Schools, colleges and universities. These uses may be granted in any district, except the LI and GI Districts, provided that:

- (a) Schools, colleges and universities which offer any general academic instruction at levels above the eighth grade must have:**
 - [1] A parcel of at least three acres. An additional eight hundred seventy-five square feet of parcel area will be required for each student in excess of fifty.**
 - [2] A parcel frontage of at least three hundred feet.**
 - [3] A front yard depth of at least fifty feet, a side yard depth equal to at least two times the height of the tallest institutional building located on the parcel which is approximate to the side lot line and a rear yard depth of at least fifty feet.”**

Section 267-9I provides:

“Limitations, guides and standards. In addition to the specific standards, guidelines and criteria described in this Part 1 and other relevant considerations, the Board shall be guided by the following general considerations. Notwithstanding any of the provisions of this Part 1, the Board shall not approve an application if it finds that the proposed building, addition, extension of building or use, use or change of use would adversely affect the public health, safety and general welfare or would result in dangerous traffic conditions or jeopardize the lives or property of people living in the neighborhood. The Board may impose conditions or limitations on any approval, including the posting of performance guaranties, with regard to any of the following:

- (1) The number of persons living or working in the immediate area.**
- (2) Traffic conditions, including facilities for pedestrians, such as sidewalks and parking facilities, the access of vehicles to roads; peak periods of traffic; and proposed roads, but only if construction of such roads will commence within the reasonably foreseeable future.**
- (3) The orderly growth of the neighborhood and community and the fiscal impact on the county.**
- (4) The effect of odors, dust, gas, smoke, fumes, vibration, glare and noise upon the use of surrounding properties.**

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- (5) Facilities for police, fire protection, sewerage, water, trash and garbage collection and disposal and the ability of the county or persons to supply such services.
- (6) The degree to which the development is consistent with generally accepted engineering and planning principles and practices.
- (7) The structures in the vicinity, such as schools, houses of worship, theaters, hospitals and similar places of public use.
- (8) The purposes set forth in this Part 1, the Master Plan and related studies for land use, roads, parks, schools, sewers, water, population, recreation and the like.
- (9) The environmental impact, the effect on sensitive natural features and opportunities for recreation and open space.
- (10) The preservation of cultural and historic landmarks.

Sections 267-51 and 267-52 also apply and provide:

“Special exceptions may be permitted when determined to be compatible with the uses permitted as of right in the appropriate district by this Part 1. Special exceptions are subject to the regulations of this Article and other applicable provisions of this Part 1.”

- A. Special exceptions require the approval of the Board in accordance with § 267-9, Board of Appeals. The Board may impose such conditions, limitations and restrictions as necessary to preserve harmony with adjacent uses, the purposes of this Part 1 and the public health, safety and welfare.
- B. A special exception grant or approval shall be limited to the final site plan approved by the Board. Any substantial modification to the approved site plan shall require further Board approval.
- C. Extension of any use or activity permitted as a special exception shall require further Board approval.
- D. The Board may require a bond, irrevocable letter of credit or other appropriate guaranty as may be deemed necessary to assure satisfactory performance with regard to all or some of the conditions.

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- E. In the event that the development or use is not commenced within three (3) years from date of final decision after all appeals have been exhausted, the approval for the special exception shall be void. In the event of delays, unforeseen at the time of application and approval, the Zoning Administrator shall have the authority to extend the approval for an additional twelve (12) months or any portion thereof.

The Applicant is requesting a Special Exception to operate a high school in an AG District. The Maryland Court of Special Appeals has set forth the appropriate standards to be applied in Special Exception cases in Schultz v. Pritts, 291 Md. 1, 432 A.2d 1319 (1981). This decision states the applicable standards for judicial review of the grant or denial of a special exception use as follows:

“...The special exception use is a part of the comprehensive zoning plan sharing the presumption that, as such, it is in the interest of the general welfare, and therefore, valid. The special exception use is a valid zoning mechanism that delegates to an administrative board a limited authority to allow enumerated uses which the legislature has determined to be permissible *absent any facts or circumstances negating the presumption*. The duties given the Board are to judge whether the *neighboring properties in the general neighborhood would be adversely affected* and whether the use in the particular case is in harmony with the general purpose and intent of the plan.

Whereas, the applicant has the burden of adducing testimony which will show that his use meets the prescribed standards and requirements, he does not have the burden of establishing affirmatively that his proposed use would be a benefit to the community. If he shows to the satisfaction of the Board that the proposed use would be conducted without real detriment to the neighborhood and would not actually adversely affect the public interest, he has met his burden. The extent of any harm or disturbance to the neighboring area and uses is, of course, material. If the evidence makes the question of harm or disturbance or the question of the disruption of the harmony of the comprehensive plan of zoning fairly debatable, the matter is one for the Board to decide. But if there is no probative evidence of harm or disturbance in light of the nature of the zone involved or of factors causing disharmony to the operation of the comprehensive plan, a denial of an application for a special exception use is arbitrary, capricious, and illegal. (Citations omitted.) These standards dictate that if a requested special exception use is properly determined to have an adverse effect upon neighboring properties in the general area, it must be denied.” (emphasis in original) 291 Md. at 11-12, 432 A.2d at 1325.

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The Court of Appeals established the following guidelines with respect to the nature and degree of adverse effect which would justify denial of the special exception:

“Thus, these cases establish that the appropriate standard to be used in determining whether a requested special exception use would have an adverse effect and, therefore, should be denied is whether there are facts and circumstances that show that the particular use proposed at the particular location proposed would have any adverse effects above and beyond those inherently associated with such a special exception use irrespective of its location within the zone.” 291 Md. at 15, 432 A.2d at 1327.

See also Deen v. Baltimore Gas & Elec. Co., 240 Md. 317, 214 A.2d 146 (1965).

Applying the standards set forth by the Maryland Court of Special Appeals, the Hearing Examiner concludes that a high school operated at this location will have no adverse or material impacts greater at this location than if it were located at any other location within the zone. In reaching this conclusion, the Hearing Examiner has taken into account the Limitations, Guides and Standards set forth in section 267-9I of the Harford County Code. Lastly, the Applicant has met all of the requirements of Harford County Code Section 267-53C(7).

Based on the foregoing, the Hearing Examiner recommends approval of the Special Exception requested herein subject to the following conditions:

1. The Applicant obtains any and all necessary permits and inspections.
2. The Applicant submit for review and approval to the Department of Planning and Zoning a detailed site plan which in turn, will be subject to review and approval by the Development Advisory Committee (DAC) prior to the expansion of the school beyond 40 students.
3. The Applicant shall comply with any and all requirements of the Harford County Health Department regarding water and septic services and/or facilities.
4. The Applicant shall obtain all necessary permits for access to Pleasantville Road and complete any necessary improvements to the access point as determined by the Harford County Department of Public Works.

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5. The number of students shall be limited to 80.
6. The site plan shall address the addition of landscaping to serve as screening from residential properties.

Date AUGUST 23, 2000

**William F. Casey
Zoning Hearing Examiner**